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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT	
NORTHERN DISTRICT OF TEXAS	
FILED	
SEP 17 2009	
CLERK, U.S. DISTRICT COURT	
By _____	Deputy _____ NT

UNITED STATES OF AMERICA)
)
V.) NO. 3:09-CR-084 B-1
)
JACK HAMMOND CLAY)

MOTION TO DISMISS FOR LACK OF VENUE

Comes now Defendant Jack Hammond Clay, and for Motion to Dismiss for Lack of Venue states:

1. This motion is filed seeking the dismissal of the information because this Court lacks venue over the claims made therein.
2. This United States District Court for the Northern District of Texas lacks venue, and therefore jurisdiction, for the following reasons.
3. All 3 counts allege the failure to file tax returns, for the years 2002 through 2004 inclusive.
4. The government alleges that Defendant failed to file tax returns for the aforesaid years in Austin, Texas, or at the local office in Dallas, or other place permitted by the Commissioner of Internal Revenue.
5. Pursuant to the US Constitution and interpreting cases, an offense of omission can occur, if at all, only at the place at which the act was required by law to have been performed.

6. Neither such city is by any reasonable interpretation within the boundaries set by Congress for this Court. Nor is any part of the Northern District of Texas identified by Congress at 26 U.S.C. § 6091 as the place at which the alleged failure to act took place.

7. Furthermore, the instructions prepared by the IRS and disseminated for public consumption show that the place directed for filing is not in the Northern District of Texas. Exhibit 1, a copy of the page of the IRS instructions for the form 1040 for 2004 saying where tax returns are to be filed, is attached hereto.

8. Specifically, the instructions say that returns if required should be filed in Austin, Texas. Instructions for 2002 and 2004 are similar.

9. This Court lacks territorial jurisdiction and venue over the place where the crimes are alleged to have been committed.

10. The US Attorney who prepared the information lacked the power to investigate the crimes described in the indictment, for amongst other reasons the fact that the crimes could not possibly have been committed within the territorial jurisdiction or venue of this Court.

WHEREFORE, Defendant respectfully requests that this Court issue an order stating that the US Attorney had no power to investigate or to accuse by information with respect to the crimes alleged in the information; declaring that this Court has neither jurisdiction nor venue over the charges of the information; dismiss the information; and grant such other and further relief as may be appropriate whether or not specifically prayed.

RESPECTFULLY SUBMITTED this Sept 17, 2009.

By: Jack Hammond Clay
Jack Hammond Clay
c/o 1400 S Nursery Rd
Irving, Texas [75060]

CERTIFICATE OF CONFERENCE

A copy of this pleading was emailed to Assistant US Attorney Amy Mitchell, who stated upon conference that:

CERTIFICATE OF SERVICE

I, Jack Hammond Clay, certify that I have contemporaneously with this filing caused the Plaintiff to be served with a copy of this pleading by email and by CM/ECF to:

Amy J. Mitchell
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